



September 14, 2000

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2000-3545

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139367.

The City of Houston (the "city") received a request for the results of all audits conducted by the City Controller's Office from January 1, 1999 to the present. You state that most of the responsive records will be made available to the requestor. You explain that, in Open Records Letter No. 2000-2588 (2000), this office determined that one of the requested audits was excepted from public disclosure under section 552.108(a)(1). Therefore, you must withhold that audit pursuant to ORL 2000-2588. *See* Gov't Code § 552.301(a) (governmental body must ask for a decision if there has not been a previous determination about whether the information falls within one of the exceptions). You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. You explain that the submitted information consists of the results of a petty cash audit of the police department's petty cash fund performed by the City Controller's Office. You state that the audit uncovered irregularities in the handling of the petty cash fund which has resulted in a criminal investigation by the Office of the Inspector General of the police department. You also inform us that the matter has been referred to the district attorney's office and that prosecution is pending for theft by a public servant. Accordingly, we find that release of the requested information would interfere with the detection, investigation, or prosecution of

crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, we conclude that the city may withhold the information under section 552.108(a)(1).¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

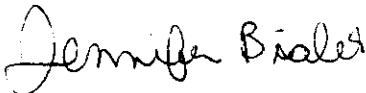
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

¹Having found the information excepted under section 552.108, we need not address the applicability of section 552.103.

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Bialek".

Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB\er

Ref: ID# 139367

Encl: Submitted documents

cc: Ms. Jocelyn Lane
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(w/o enclosures)